REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

VITALO PACKAGING INTERNATIONAL, INC., Petitioner,	**CTA CASE NO. 9231**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 12 2019 10:30 am

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Re: Decision promulgated on 5 July 2019)**, filed on July 22, 2019, with petitioner's **Comment/Opposition (*to Respondent's Motion for Reconsideration*)**, filed on August 20, 2019.

Respondent seeks reconsideration of this Court's Decision dated July 5, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision of respondent dated December 3, 2015, the FLD/FAN dated April 15, 2010 and December 3, 2010, the PCL dated May 25, 2011, the FNBS dated August 12, 2011, and the Warrant of Distraint and/or Levy dated November 24, 2011 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his motion, respondent asserts that petitioner was never deprived of its constitutionally protected right to due process.

Respondent alleges that all its notices to petitioner were sent to one address, albeit the old registered address of petitioner, and were received by the same people who received the other notices.

Respondent contends that petitioner protested and replied to the following notices despite the fact that the same were sent to its old registered business address – to which it claims it has no connection: (1) Formal Letter of Demand relating to Letter of Authority No. 4547 – an audit and investigation resulting to [*sic*] an assessment for a significantly lower amount; (2) Preliminary Collection Letter dated May 25, 2011; and (3) Final Notice Before Seizure dated August 12, 2012. According to respondent, it is not only untenable but really unbelievable that petitioner now asserts that it only received, by its own admissions, the three notices which were issued and served under the same circumstances as the other notices.

Respondent avers that assuming for the sake of argument that petitioner did not receive the Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), and Formal Letter of Demand (FLD), the Supreme Court has held in a long line of cases that the essence of due process is the opportunity to raise objections to government action. According to respondent, the records clearly show that petitioner was able to protest the FAN and replied to the other notices, and that petitioner even requested to be clarified on certain matters contained in the assessment notice so as to lessen its liability.

Respondent maintains that it was erroneous for the Court to invalidate the 2006 assessments for failure of respondent to prove compliance with the due process requirement considering that he has thoroughly considered petitioner's arguments and contentions which ultimately led to the issuance of the FLD and Assessment Notices. According to respondent, it is clear that the essence of due process was satisfied, having substantially complied with the procedural requirements in the conduct of the audit and investigation.

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Finally, respondent states that pursuant to Sec. 3.1.6 of Revenue Regulations No. 18-2013 the NIC, PAN, and FLD were sent to petitioner's known address which notices where actually received by petitioner. Hence, respondent maintains that petitioner was not and was never deprived of its constitutionally proctected right to due process.

Petitioner counters that respondent's motion must be denied outright for being patently *pro forma* since the grounds relied upon and the issues raised in the motion are mere rehash/restatements of respondent's previous arguments raised before this Court, which have been exhaustively discussed, passed upon, and denied in the assailed Decision promulgated on July 5, 2019.

Petitioner argues that in the case at bar, it is evident that respondent was remiss in complying with the due process requirement in the service of notices; thus, the Court correctly cancelled/invalidated the assessments issued by respondent. According to petitioner, it is important to note that based on respondent's motion, respondent categorically admits that all notices were sent to the old registered address of petitioner. Petitioner argues that by respondent's own admission, in sending the assessment notices to the wrong address, respondent failed to strictly comply with the due process requirement prescribed under Section 228 of the NIRC and Section 3 of Revenue Regulations No. 12-99, making the assessments void.

Petitioner maintains that prior to the issuance of the PCL, FNBS and WDL, no NIC, PAN, and FAN were ever received by petitioner. These were served on the security guard, who is not an employee or authorized representative of petitioner, in its old office address. Petitioner alleges that it is no longer doing business in its old address. Thus, petitioner argues that service to a party not authorized to receive notices, coupled with service to the wrong address, cannot be deemed compliance with the due process requirement in service notices.

The instant motion is bereft of merit.

After a careful and thorough evaluation of the arguments raised by petitioner and respondent, the Court finds the same a mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision, to wit:

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"xxx (T)he identity and authority of the persons whose signatures appear on the registry return receipts were not established. Thus, respondent failed to prove that the PAN and FAN were properly and duly served upon and received by petitioner, thus, the assessments made against petitioner for deficiency income tax, FWT, FBT, and EWT for CY 2007 are void for failure to accord petitioner due process in the issuance thereof.

The Court has been consistent in its ruling that the registry return card must be authenticated to serve as proof of receipt of letters sent through registered mail. To be sure, the presentation of the registry card with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee.

In *Ting vs. Court of Appeals*, the Supreme Court held:

> 'Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.
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> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that [a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the

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> addressee's name on the proper space and then affix legibly his own signature below it.
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> In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. **All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery.** *(Emphases supplied)'*

Non-receipt of the NIC and the PAN results in the invalidity of the FAN issued thereafter, for being violative of petitioner's right to due process. Further, considering that the FLD/FAN itself was also not actually received by petitioner or its authorized representative, the same cannot be considered as having been validly issued and therefore, is considered void and cannot become final, executory and demandable.

The fact that petitioner was able to protest the FAN does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN `does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.'

Taking all the foregoing into consideration, the Court finds that no competent evidence was presented by respondent to prove the actual receipt of petitioner of the LOA, NIC, PAN and the FLD with Assessment Notices. As already emphasized, strict compliance with the due process requirement is necessary for a valid tax assessment.

Having failed to prove compliance thereof, respondent denied petitioner of its right to due process.

Accordingly, the deficiency tax assessments against respondent are null and void for having been issued in

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> violation of the due process requirements under the law and RR No. 12-99.
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> The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.
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> Without a valid assessment, the subsequently issued PCL, FNBS, and WDL are likewise illegal since a void assessment bears no valid fruit."

In view of the foregoing, the Court finds that respondent failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 5 July 2019)**, is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice